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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,919	12/28/2001	Fabrice Devaux	Q67817	2835

7590 09/29/2006
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3213

EXAMINER

WANG, QUAN ZHEN

ART UNIT	PAPER NUMBER
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2613

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

31

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/028,919	Applicant(s) DEVAUX ET AL.	
	Examiner Quan-Zhen Wang	Art Unit 2613	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: 4 and 5.
- Claim(s) rejected: 1-3 and 6-8.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because:

The amended drawings are not acceptable because of the following reasons:

1. the numbers not needed in the drawings should be removed from the drawings, not just crossed with a short line;
2. the y-axis of fig. 4 should be clearly labeled in the drawing.

Appropriate correction to claim 1 is required, as it is set forth by the claim objection in the previous Office Action.


Regarding claims 1 and 3, Applicant argues that "neither of the applied references disclose or suggest at least, 'Demultiplexing the signals, delaying the signals individually between channels and multiplexing the signals again for the next step First remodulating the multiplexed signal with a clock signal of high frequency monitoring the remodulated signal with at least one low frequency photodetector unit measuring, analyzing the photocurrent of the photodetector, adjusting via an electronic circuit the time delays between the channels.'" Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. In addition, the Office Actions clearly state: "Regarding claims 1 and 3, Adams discloses a method for adjusting delays between multiple channels of an optical WDM system including: Demultiplexing the signals with demultiplexer (fig. 1, WDM 110), delaying the individual signals individually between channels (fig. 1, phase controller 111; column 2, lines 45-47) and multiplexing the signals again (fig. 1, WDM 112; column 2, lines 20-25) for the next step; Remodulating the multiplexed signal (fig. 1, modulator 107) with a clock signal of high frequency (fig. 1, "electronic data in") and monitoring the remodulated signal with a photodetector (fig. 1, PD 118); Measuring and analyzing the photocurrent of the photodetector and adjusting via an electronic circuit the delays between the channels (column 2, lines 30-39 and 61-67; column 3, lines 1-19). Adams differs from the claimed invention in that Adams does not specifically disclose that the detector is a low frequency photodetector. However, it is well known in the art to monitor an optical signal output from a modulator with a low frequency detector. For example, Epworth discloses to use a low frequency photodetector (fig. 3, detector 31) monitoring the mean optical output power of a modulator 10 with a clock signal of high frequency (column 2, lines 55-67; column 3, line 67 through column 4, line 3). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to incorporate in Adams a low frequency photodetector, such as the one discloses by Epworth, in order to measure the average optical output power of the modulator."

Applicant further argues that "one skilled in the art would not have been led to combine Epworth with Adams to arrive at the present invention". The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Adams provides motivation to monitor the average power of the remodulated signal in column 3, lines 50-53.

For the reasons above, the rejections of claims 1 and 3 still stand.

Regarding claim 2, Applicant argues that "neither Adams nor Epworth, either alone or in combination, discloses or suggests at least "remodulating the multiplexed signal in a first modulator with a clock signal of high frequency" and "monitoring a part of the remodulated signal in a second modulator with at least one low frequency photodetector unit". However, the Office Actions clearly states: "Regarding claim 2, Regarding claims 1 and 3, Adams discloses a method for adjusting delays between multiple channels of an optical WDM system including: Demultiplexing the signals with demultiplexer (fig. 1, WDM 110), delaying the individual signals individually between channels (fig. 1, phase controller 111; column 2, lines 45-47) and multiplexing the signals again (fig. 1, WDM 112; column 2, lines 20-25) for the next step; Remodulating the multiplexed signal in a first modulator (fig. 1, modulator 107) with a clock signal of high frequency (fig. 1, electronic data in); Monitoring the remodulated signal in a second modulator (fig. 1, equalizer 101) with a photodetector (fig. 1, PD 118); Measuring, analyzing the photocurrent of the photodetector and adjusting via an electronic circuit the delays between the channels (column 2, lines 30-39 and 61-67; column 3, lines 1-19). Adams differs from the claimed invention in that Adams does not specifically disclose that the detector is a low frequency photodetector. However, it is well known in the art to monitor an optical signal output from a modulator with a low frequency detector. For example, Epworth discloses to use a low frequency photodetector (fig. 3, detector 31) monitoring the mean optical output power of a modulator 10 with a clock signal of high frequency (column 2, lines 55-67; column 3, line 67 through column 4, line 3). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to incorporate in Adams a low frequency photodetector, such as the one discloses by Epworth, in order to measure the average optical output power of the modulator." All of the claimed limitations have been clearly addressed in the Office Action. Therefore, the rejection of claim 2 still stands.

For the above reasons, the rejections of claim 6-8 still stand..


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